

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Motion in part, by entering a permanent injunction against Sicard and finding him jointly liable with Co-Defendants for \$702,059.00. (Doc. 70 (“**R&R**”).) Sicard, currently incarcerated and proceeding , did not object to the R&R, but separately filed a motion for relief from default judgment and the Court’s order entering a permanent injunction against Co-Defendants—which did not apply to Defendant. (Doc. 72 (“**Response**”).) The FTC opposed, construing the Response as an objection to the R&R. (Doc. 74.) The Court agrees that the Response should be construed as an objection, and, on de novo review, finds that the R&R is due to be adopted and the Response denied.

I. LEGAL STANDARDS

When a party objects to a magistrate judge’s findings, the district court must “make a de novo determination of those portions of the report . . . to which objection is made.” 28 U.S.C. § 636(b)(1). The district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” The district court must consider the record and factual issues based on the record independent of the magistrate judge’s report. , 896 F.2d 507, 513 (11th Cir. 1990).

II. PROCEDURAL HISTORY

The FTC commenced this action on July 10, 2017, alleging that Sicard and Co-Defendants engaged in a pattern of deceptive and abusive debt collection practices that defrauded consumers of more than \$690,000. (Doc. 1, ¶¶ 12–27.) With the Complaint, the FTC moved for a temporary restraining order (Doc. 4 (“**TRO**”)), which the Court granted that same day (Doc. 15.) The FTC also sought a preliminary injunction against all

defendants, which the Court set for a hearing. (¶¶ XXIV.) Before that hearing, the FTC filed a consent motion with Co-Defendants stipulating to the entry of a preliminary injunction. (Doc. 27.) At the hearing—where Sicard did not appear, despite notice and an opportunity to appear telephonically—the Court addressed the proposed preliminary injunction and inquired about the appointed Receiver’s opinion about its sufficiency. (Doc. 32.) Finding it sufficient, the Court then preliminarily enjoined Co-Defendants and separately entered a preliminary injunction against Sicard. (Docs. 35, 36.)

The case progressed, and Co-Defendants filed an answer to the Complaint. (Doc. 39.) Sicard did not. At the appropriate time, the FTC moved for an entry of default against Sicard (Doc. 51), which was granted (Doc. 52.) Co-Defendants and the FTC then moved to stay the case pending consideration of a settlement agreement (Doc. 57), which the Court allowed (Doc. 59). The case against Co-Defendants was therefore administratively closed. ()

On November 20, 2017, Sicard submitted his first filings in the case: (1) a motion seeking to extend his time to answer the Complaint until May 9, 2018; and (2) a motion to dissolve the then-defunct Temporary Restraining Order. (Docs. 60, 61.) Finding Sicard’s extension motion deficient, Magistrate Judge Smith denied Sicard’s request in a comprehensive order that explained filing procedures, given Sicard’s status. (Doc. 61.) Following this, Sicard made no attempt to file a corrected version of that m

Meanwhile, the FTC reached a stipulated permanent injunction with Co-Defendants and moved for the Court's approval. (Doc. 66.) This was granted, so resolving all claims against Co-Defendants. (Doc. 67.) Turning its efforts toward Sicard, the sole remaining defendant, the FTC renewed its motion for default judgment with a corrected judgment amount. (Doc. 69.) As support, the FTC relied on the facts alleged in its Complaint—which Sicard admitted by virtue of his default—to establish his participation in a debt collection scheme that violated the FTCA and FDCPA. (Doc. 69-1, pp. 3-7.) Sicard, as a key perpetrator of the scheme, was liable for these violations along with Co-Defendants, so the FTC argued it was entitled to injunctive and equitable monetary relief. (at 8-10.) The FTC also contended that the scope of its proposed order for permanent injunctive relief was appropriate in light of Sicard's conduct. (at 10-14.) Sicard failed to respond.

Magistrate Judge Smith then issued his R&R finding default judgment against Sicard appropriate and recommending that the Court issue the permanent injunction. (Doc. 70.) On careful review, however, he found that the FTC's proposed monetary judgment did not reflect the joint and several nature of Sicard's liability with Co-Defendants. (at 9-10.) Rather, he found that the FTC's proposed judgment—seeking \$702,059 from Sicard, the same amount it sought from Co-Defendants—ran afoul of the “one satisfaction rule” and would allow for duplicative recovery. (at 10.) To cure this, Magistrate Judge Smith recommended modifying the judgment against Sicard by finding him jointly liable with Co-Defendants for \$702,059 and leave collection matters outside the terms of the judgment. ()

Here, entry of default was warranted because Sicard failed to answer or otherwise defend this action. (Docs. 51, 52.) Nonetheless, Sicard seeks to set this aside, claiming: (1) “excusable neglect” due to his current incarceration; (2) “meritorious defenses”; and (3) “due diligence.” (Doc. 72.) But none of these arguments demonstrate good cause to set aside the entry of default. Rather, the Court finds that Sicard willfully defaulted by failing to timely respond to the FTC’s numerous filings, despite knowledge of this proceeding and the FTC’s diligent attempts to induce his cooperation. (, Doc. 21 (FTC filing a motion on Sicard’s behalf to allow him to appear telephonically at a hearing, which Sicard did not attend); Doc. 45 (reflecting FTC performed in-person service for Sicard).) Thus, the entry of default against Sicard remains.

B. Default Judgment

Next, the Court finds that default judgment is appropriate here. Under Federal Rule of Civil Procedure 55(b)(2), a court may enter default judgment against a properly-served defendant who fails to appear or otherwise defend an action against him. Through default, a defendant “admit[s] the plaintiff’s well-pleaded allegations of fact” for liability purposes. , 820 F.3d 359, 361 (11th Cir. 1987). So long as the factual allegations of the complaint provide a sufficient legal basis to support entry of default judgment, a court may do so. , 561 F.3d 1298, 1307 (11th Cir. 2009). To that end, a complaint must be founded on “well-pleaded allegations.”

Here, as established above, Sicard failed to answer or otherwise defend this action. Therefore, default is appropriate so long as the Complaint’s allegations are well-plead.

These misleading representations were likely to mislead consumers acting reasonably under the circumstances. Therefore, Defendants' practices constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). In making these representations, Defendants also (a) misrepresented the character, amount, or legal status of a debt in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A); (b) misrepresented that any individual is an attorney or that any communication is from an attorney in violation of Section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3); (c) misrepresented that non(o)4I3) 15 U.t§ec4,37(e)s

12. As alleged in Count V(f) of the Complaint, in numerous instances, Defendants failed to disclose in their initial communications with consumers that the debt collector is attempting to collect a debt and that any information obtained would be used for that purpose, and failed to disclose in subsequent communications that the communication was from a debt collection, in violation of Section 807(11) of the FDCPA, 15 U.S.C. § 1692e(11).
13. As alleged in Count V(g) of the Complaint, in numerous instances, Defendants used business, company, or organization names other than their true names in violation of Section 807(14) of the FDCPA, 15 U.S.C. § 1692e(14).
14. As alleged in Count VI of the Complaint, in numerous instances, Defendants failed to provide consumers with required validation notices in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).
15. Defendant Sicard is the principal and manager of the Corporate Defendants. He is listed as the vice president of Defendant S & H Financial Group, Inc. on corporate records, and as the president on merchant account

credit card, bank account, or other financial account); and (d) provides for monitoring by the FTC of Defendant Sicard's compliance with such a permanent injunction.

19. It is proper in this case to enter an equitable monetary judgment against Defendant Sicard for his violations of Section 5 of the FTC Act and the FDCPA. Defendants who have violated Section 5 of the FTC Act can be held jointly and severally liable for the total amount of the consumer injury. The FTC is entitled to judgment against Defendant Sicard in the amount of \$702,059, the injury caused to consumers by Defendants, even though this amount may exceed his unjust enrichment.
20. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.
21. The entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. "**Credit Repair Service**" means selling, providing, or performing any service (or representing that such service can or will be.

to any activity or service described in clause (1).

- B. **“Debt”** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
- C. **“Debt Collection Activities”** means any activities of a debt collector to collect or attempt to collect, directly or indirectly, a debt owed or due, or asserted to be owed or due.
- D. **“Debt Collector”** means any person who uses any instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also includes any person to the extent such person collects or attempts to collect any debt that was in default at the time it was obtained by such person.
- E. **“Defendant Sicard”** means Dequan Sicard and by whatever names might be known.
- F. **“Defendants”** means Hardco Holding Group LLC, S&H Financial Group Inc., Daryl Hall, and Dequan Sicard, individually, collectively or any combination thereof.

1. An extension of consumer credit;
2. Credit repair services; or
3. Any secured or unsecured debt relief product or service.

H. **“Person”** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.

I. **“Secured or Unsecured Debt Relief Product or Service”** means, with respect to any mortgage, loan, debt, or obligation between a person and one or more secured or unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication to:

1. Negotiate, settle, or in any way alter the terms of payment or other terms of the mortgage, loan, debt, or obligation, including but not limited to, a reduction in the amount of interest, principal balance, monthly payments, or fees owed by a person to a secured or unsecured creditor or debt collector;
2. Stop, prevent, or postpone any mortgage or deed of foreclosure sale for a person’s dwelling, any other sale of collateral, any repossession of a person’s dwelling or other collateral, or otherwise save a person’s dwelling or other collateral from foreclosure or repossession;
3. Obtain any forbearance or modification in the timing of payments from any secured or unsecured creditor or debt collector;
4. Negotiate, obtain, or arrange any extension of the period of time within

which the person by (a) cure his or her default on the mortgage, loan, debt, or obligation, (b) reinstate his or her mortgage, loan, debt, or obligation, (c) redeem a dwelling or other collateral, or (d) exercise any right to reinstate the mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;

5. Obtain any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling or other collateral; or

6. Negotiate, obtain, or arrange, (a) a short sale of a dwelling or other collateral, (b) a deed-in-lieu of foreclosure, or (c) any other disposition of a II(e)-11.of a19

- B. Advertising, marketing, promoting, offering for sale, selling, or buying any consumer or commercial debt or any information regarding a consumer relating to a debt.

PROHIBITION AGAINST MISREPRESENTATIONS RELATING TO FINANCIAL-RELATED PRODUCTS OR SERVICES

II. IT IS FURTHER ORDERED that Defendant Sicard and his officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any financial-related product or service are permanently restrained and enjoined from:

- A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:
 - 1. The terms or rates that are available for any loan or other extension of credit;
 - 2. Any aspect of any credit repair service, including but not limited to

- A. That any person is an attorney or affiliated or associated with an attorney or law firm;
- B. That any person owes any debt;
- C. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the consumer; and
- D. Any other fact material to a consumer's decision to purchase any good or service, such as (1) the total costs to purchase, receive, or use, and the quantity of, any good or service; (2) any material restriction, limitation, or condition to purchase, receive, or use any good or service; or (3) any material aspect of the performance, efficacy, nature, or central characteristics of any good or service.

MONETARY JUDGMENT

IV. IT IS FURTHER ORDERED that:

other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account),0.068 Tw 54 Tw 6.9o-0.068

his own involvement); (d) describe in detail whether and how he is

2. Additionally, Defendant Sicard must report any change in: (a) name, including aliases or fictitious name, or residence address; or

(b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify

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RECORDKEEPING

VIII. IT IS FURTHER ORDERED that Defendant Sicard must create certain records for 20 years after entry of the Order, and retain each such record for 5 years.

Specifically, Defendant Sicard for any business in which he, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether

Sicard, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681(a)(1).

ENTRY OF JUDGMENT

- X. IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk immediately shall enter this Order as a final judgment as to Defendant Sicard.

RETENTION OF JURISDICTION

- XI. IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

V. CONCLUSION

Accordingly, it is ORDERED AND ADJUDGED as follows:

1. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 70) is ADOPTED, CONFIRMED, and made a part of this Order.
2. Plaintiff FTC's Motion for Entry of Judgment by Default against Defendant Dequan Sicard (Doc. 69) is GRANTED IN PART AND DENIED IN PART.
 - a. The Motion is GRANTED to the extent identified in this Order.
 - b. In all other respects, the Motion is DENIED .
3. Defendant Dequan M. Sicard's Motion for Relief from Default Judgment and Order for Permanent Injunction (Doc. 72) is DENIED .

DONE AND ORDERED

Copies to:
Counsel of Record
Pro Se Party